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SENATE BILL 415

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mary Jane M Garcia

AN ACT

RELATING TO CRIMINAL LAW; ELIMINATING THE CRIMINAL OFFENSES OF  
DISSEMINATION OF MATERIAL THAT IS HARMFUL TO A MINOR BY  
COMPUTER AND CHILD LURING; CREATING A NEW CRIMINAL OFFENSE  
KNOWN AS CHILD SOLICITATION BY COMPUTER; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-37-3.2 NMSA 1978 (being Laws 1998,  
Chapter 64, Section 1) is amended to read:

"30-37-3.2. ~~[DISSEMINATION OF MATERIAL THAT IS HARMFUL TO  
A MINOR BY COMPUTER]~~ CHILD ~~[LURING]~~ SOLICITATION BY COMPUTER. --

~~[A. Dissemination of material that is harmful to a  
minor by computer consists of the use of a computer  
communications system that allows the input, output,  
examination or transfer of computer data or computer programs  
from one computer to another, to knowingly and intentionally~~

underscored material = new  
[bracketed material] = delete

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[bracketed material] = delete

1 ~~initiate or engage in communication with a person under~~  
2 ~~eighteen years of age when such communication in whole or in~~  
3 ~~part depicts actual or simulated nudity, sexual intercourse or~~  
4 ~~any other sexual conduct. Whoever commits dissemination of~~  
5 ~~material that is harmful to a minor by computer is guilty of a~~  
6 ~~misdemeanor.~~

7           ~~B.]~~ A. Child [~~luring~~] solicitation by computer  
8 consists of a person knowingly and intentionally inducing a  
9 child under sixteen years of age, by means of computer, to  
10 engage in sexual intercourse, sexual contact or in a sexual or  
11 obscene performance, or to engage in any other sexual conduct  
12 when the perpetrator is at least three years older than the  
13 child. Whoever commits child [~~luring~~] solicitation by computer  
14 is guilty of a [~~fourth~~] second degree felony.

15           ~~[C. In a prosecution for dissemination of material~~  
16 ~~that is harmful to a minor by computer, it is a defense that~~  
17 ~~the defendant has:~~

18                   ~~(1) in good faith taken reasonable, effective~~  
19 ~~and appropriate actions under the circumstances to restrict or~~  
20 ~~prevent access by minors to indecent materials on computer,~~  
21 ~~including any method that is feasible with available~~  
22 ~~technology;~~

23                   ~~(2) restricted access to indecent materials by~~  
24 ~~requiring the use of a verified credit card, debit account,~~  
25 ~~adult access code or adult personal identification number; or~~

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[bracketed material] = delete

1                   ~~(3) in good faith established a mechanism such~~  
2 ~~as labeling, segregation or other means that enables the~~  
3 ~~indecent material to be automatically blocked or screened by~~  
4 ~~software or other capability reasonably available to persons~~  
5 ~~who wish to effect such blocking or screening and the defendant~~  
6 ~~has not otherwise solicited a minor not subject to such~~  
7 ~~screening or blocking capabilities to access the indecent~~  
8 ~~material or to circumvent the screening or blocking.~~

9                   ~~D. In a prosecution for dissemination of material~~  
10 ~~that is harmful to a minor by computer, a person shall not be~~  
11 ~~held to have violated the provisions of this section solely for~~  
12 ~~providing access or connection to or from a facility, system or~~  
13 ~~network not under the person's control, including transmission,~~  
14 ~~downloading, intermediate storage, access software or other~~  
15 ~~related capabilities that are incidental to providing access or~~  
16 ~~connection and that do not include the creation of the content~~  
17 ~~of the communication.~~

18                   ~~E. The limitations provided by Subsection D of this~~  
19 ~~section shall not be applicable to a person who is a~~  
20 ~~conspirator with an entity actively involved in the creation or~~  
21 ~~knowing dissemination of indecent material by computer or who~~  
22 ~~knowingly advertises the availability of indecent material by~~  
23 ~~computer. The limitations provided by Subsection D of this~~  
24 ~~section shall not be applicable to a person who provides access~~  
25 ~~or connection to a facility, system or network that~~

underscored material = new  
[bracketed material] = delete

1 ~~disseminates indecent material by computer that is owned or~~  
2 ~~controlled by him.~~

3 ~~F. No employer shall be held liable for the actions~~  
4 ~~of an employee or agent unless the employee's or agent's~~  
5 ~~conduct is within the scope of his employment or agency and the~~  
6 ~~employer, having knowledge of such conduct, authorizes or~~  
7 ~~ratifies the conduct or recklessly disregards the conduct.]~~

8 B. In a prosecution for child solicitation by  
9 computer, it is not a defense that the intended victim of the  
10 defendant was a peace officer posing as a child under sixteen  
11 years of age.

12 C. For purposes of determining jurisdiction, child  
13 solicitation by computer is committed in this state if a  
14 computer transmission either originates or is received in this  
15 state."

16 Section 2. EFFECTIVE DATE. --The effective date of the  
17 provisions of this act is July 1, 2005.